

Contracting with PaintCare for Household Hazardous Waste Programs

Updated — January 2024



This fact sheet is a guide for Household Hazardous Waste (HHW) programs that are interested in partnering with PaintCare to collect latex and oil-based paint. Partnering with PaintCare can reduce your existing paint management costs and benefit your community. The following describes the various contracting options available to have sites and events participate as PaintCare drop-off sites.

Paint Stewardship Program

Some states have passed laws requiring paint manufacturers to set up and operate a paint stewardship program. These programs are funded by a fee on architectural paint sold in the state. PaintCare is a nonprofit organization formed by the American Coatings Association (ACA) to administer the paint stewardship program. PaintCare welcomes partnerships with existing waste collection programs, including HHW sites/events.

Benefits to Programs and Communities

When your program participates, you can:

- Save on paint management (supplies, transportation, and recycling) and public outreach costs
- Conserve resources and keep paint out of the solid waste stream
- Make recycling of leftover paint more convenient for your community

Contracting Process

To facilitate the contracting process with PaintCare, you should:

- Contact PaintCare to begin contracting discussions as early as possible
- Analyze your current operations so you can describe them in detail to PaintCare to help determine the most appropriate type of contracting approach for your program
- Reach out internally to those who will be involved with the contracting process to understand their needs and time constraints
- Consult with staff involved with paint management operations to ensure they understand how partnership with PaintCare works and to address any questions and concerns with PaintCare staff

How to Contract to be a PaintCare Drop-Off Site

Options for drop-off sites to address the varying needs of local government agencies include:

DIRECT CONTRACT

A direct contract is between PaintCare and the party ultimately responsible for the waste collection program, typically a local government. That party works directly with PaintCare regarding contract details. A direct contract is often the only viable option in cases when local government staff operate its own collection sites/events. However, a direct contract is typically one of multiple options available if operations are conducted by a third party on the local government's behalf (e.g., by a private hazardous waste operator).

Where it works best: If you operate your own HHW facility or events and/or if you engage in the types of on-site paint management activities for which PaintCare provides compensation, a direct contract is likely the best option. Some local governments prefer the control and flexibility of contracting directly with PaintCare.

INDIRECT CONTRACT

Under the "indirect" option, PaintCare (with the consent of the local government) contracts with the third-party operator that collects HHW/paint at the local government's sites and events. Such third parties are typically private waste management companies or hazardous waste haulers that local governments hire to operate sites and events on their behalf. Keep in mind that if you pursue the indirect approach but later change your contracted on-site operator, PaintCare will need time to contract with your new operator.

Where it works best: Local governments that do not operate their own collection sites and events and wish to take a more hands-off approach should consider an indirect contracting approach with PaintCare.

MIXED CONTRACTS

A mix of direct and indirect contracting may be needed in some instances when there is a mix of local government and third-party staff operating a site or event. PaintCare

aims to be flexible and will consider creative contracting approaches to meet the unique circumstances of even the most complicated local government programs.

Where it works best: A mixed approach may work best when paint collection activities are more complex and involve multiple parties (i.e., local government employees and contractors) and/or multiple services such as reuse, on-site recycling, and transporting paint from sites and events.

Important Considerations

LIABILITY & INDEMNIFICATION

PaintCare's drop-off site contracts generally require that the party contracting with PaintCare take full responsibility vis-à-vis PaintCare for the operation of the drop-off sites or events. This includes an obligation to indemnify PaintCare for any liability arising from those operations (to the extent permitted by applicable law). With indirect contracts, liability and indemnification terms are negotiated between PaintCare and the local government's operator; the local government is not required to provide any indemnification protections to PaintCare in such indirect contracting situations.

Similarly, PaintCare generally obligates its paint transportation and processing vendors to provide indemnification and other protections to the PaintCare drop-off site partners that they service. In its drop-off site contracts, PaintCare commits to imposing such requirements on its transportation and processing vendors. In other words, the party contracting with PaintCare will be required to indemnify PaintCare for any liability arising from the operation of the drop-off sites or events, but that same party is entitled to receive indemnification from PaintCare's transportation or processing vendor for any liability arising from that vendor's transportation or processing of the collected paint.

INSURANCE

Insurance provisions will be different for each local government or contractor. PaintCare is often willing to adjust the insurance requirements in its contracts to match the other party's current coverage. PaintCare also requires its transportation and processing vendors to carry more robust coverage and generally requires that those policies protect PaintCare's drop-off site partners as an additional insured.

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